

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DAVID J. SLADEK</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 253,252
<b>PIONEER EXPLORATION COMPANY</b>	)	
Respondent	)	
AND	)	
	)	
<b>PETROSURANCE CASUALTY COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals the November 1, 2001 Award of Administrative Law Judge Nelsonna Potts Barnes. Claimant was awarded an 81 percent permanent partial disability based upon a 62 percent task loss and a 100 percent wage loss through October 21, 2000, followed by a 41 percent permanent partial general body disability based upon a 62 percent task loss and a 20 percent loss of wages. Claimant contends he is entitled to an 81 percent permanent partial general body disability. The Appeals Board (Board) held oral argument on April 12, 2002.

**APPEARANCES**

Claimant appeared by his attorney, E. L. Lee Kinch of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Janell Jenkins Foster of Wichita, Kansas.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge.

**ISSUES**

- (1) What is the nature and extent of claimant's injury and disability?
- (2) Did the Administrative Law Judge properly calculate the award?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

The Award sets out findings of fact and conclusions of law in some detail, and it is not necessary to repeat those herein. The Board adopts those findings and conclusions as though set forth herein.

Claimant suffered accidental injury to his neck arising out of and in the course of his employment with respondent on December 2, 1999, while clearing an old oil lease road of overhanging tree limbs and loading railroad ties into his truck. He ultimately came under the care of Richard V. Smith, M.D., neurosurgeon, in Oklahoma City, Oklahoma. Claimant was diagnosed with a very large central disc rupture at C4-5, with a slightly less significant rupture at C5-6. Both were producing spinal stenosis. Claimant underwent surgery by Dr. Smith and his partner, Michael R. Hahn, II, M.D., including a C4-5, C5-6 anterior cervical discectomy and a fusion from C4 through C6. Claimant was also provided a two-level anterior plate and screw fixation.

The medical restrictions, postoperatively, restricted claimant from returning to his previous job as a rough neck or field supervisor in the oil fields.

Claimant continued having problems and also complained of low back and bilateral hip and leg pain. An MRI done at Dr. Hahn's request diagnosed multiple levels of degenerative disc disease primarily at L3-4 and L5-S1 with a bulging disc at L5-S1. No surgery was recommended for the low back condition for fear that surgery at that level could aggravate his neck problems. Dr. Hahn rated claimant at 10 percent to the cervical spine and imposed restrictions consisting of a 20-pound lifting restriction, limited bending and twisting, with no pushing or pulling in excess of 20 pounds.

Respondent was unable to meet the restrictions of Dr. Hahn, and no accommodated employment was available with respondent.

Claimant testified that after being released by Dr. Hahn, he began searching for work. As was noted in the Award, claimant's testimony and evidence showed a good faith effort in his job search through October 21, 2000. However, after October 21, 2000, the record contains no evidence regarding claimant's ongoing job search efforts.

Neither party disputes claimant's 62 percent task loss based upon the opinion of Jane K. Drazek, M.D., after she reviewed the task list created by James Molski.

The dispute in this matter rests with whether claimant suffered a loss of wages as a result of the injury.

The Administrative Law Judge, while not citing K.S.A. 1999 Supp. 44-510e or Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 944 P.2d 179 (1997), nevertheless, did a commendable job in evaluating claimant's good faith efforts to find work after his injury with respondent. The Administrative Law Judge found, and the Board agrees, claimant put forth a good faith effort to find work through October 21, 2000. However, as is noted in the Award, after October 21, 2000, claimant presented no testimony or documentation to establish any type of effort to find work. The Administrative Law Judge then, pursuant to K.S.A. 1999 Supp. 44-510e and Copeland, imputed to claimant a \$6-per-hour wage earning ability pursuant to the opinion of claimant's vocational expert, James Molski. This computes to a post-injury wage of \$240 per week. When compared to the pre-injury \$299.20 average weekly wage agreed to by the parties, this results in a wage loss of 20 percent for the period after October 21, 2000. When averaged with claimant's task loss of 62 percent, claimant is entitled to a 41 percent work disability commencing October 22, 2000.

Claimant also disputed the Administrative Law Judge's method of computing the award. In the Award, it was stipulated by the parties that claimant was paid 38.24 weeks temporary total disability compensation at the appropriate rate of \$199.48 per week. There was no contention that claimant was overpaid or underpaid. The parties simply agreed to the weeks of temporary total and the rate without specifying what time periods the temporary total disability covered.

In calculating the time from claimant's date of accident of December 2, 1999, through October 21, 2000, this computes to 46.43 weeks. Subtracting the 38.24 weeks of temporary total disability compensation stipulated by the parties leaves 8.19 weeks remaining through October 21, 2000.

As the record is silent regarding the exact dates claimant was paid temporary total disability compensation or the exact date claimant was released to return to work, the Board can only assume that claimant was paid temporary total disability compensation

from the time of his injury for 38.24 continuous weeks. Even though the record indicates claimant was at maximum medical improvement as of May 22, 2000, respondent apparently continued paying him temporary total disability compensation for unexplained reasons. While the Administrative Law Judge did not fully explain her method of computing the award, it does appear her calculations were correct regarding the temporary total disability weeks paid and what permanent partial disability compensation remained due. The Board, therefore, finds both that the Award of the Administrative Law Judge granting claimant an 81 percent permanent partial disability through October 21, 2000, followed by a 41 percent permanent partial general body disability and the method of computing that award are appropriate and should be affirmed.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated November 1, 2001, should be, and is hereby, affirmed. Claimant is awarded an 81 percent permanent partial general body disability through October 21, 2000, followed thereafter by a 41 percent permanent partial general body disability.

Claimant is entitled to 38.24 weeks temporary total disability compensation at the rate of \$199.48 per week totaling \$7,628.12, followed by 8.19 weeks compensation at the rate of \$199.48 per week totaling \$1,633.74 for an 81 percent permanent partial general body disability. Claimant is then entitled to an additional 152.43 weeks compensation at the rate of \$199.48 per week totaling \$30,406.74 for a 41 percent permanent partial general body disability, making a total award of \$39,668.60.

As of April 22, 2002, claimant is entitled to 38.24 weeks temporary total disability compensation at the rate of \$199.48 per week totaling \$7,628.12, followed by 8.19 weeks compensation at the rate of \$199.48 per week totaling \$1,633.74, followed thereafter by 78.14 weeks permanent partial general body disability at the rate of \$199.48 per week totaling \$15,587.37, for a total due and owing of \$24,849.23 which is ordered paid in one lump sum minus any amounts previously paid. Thereafter, claimant is entitled to 74.29 weeks permanent partial disability compensation at the rate of \$199.48 per week totaling \$14,819.37 until fully paid or until further order of the Director.

In all other regards, the Award of the Administrative Law Judge is affirmed insofar as it does not contradict the findings and conclusions contained herein.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 2002.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: E. L. Lee Kinch, Attorney for Claimant  
Janell Jenkins Foster, Attorney for Respondent  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director